View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by Louisiana State University: DigitalCommons @ LSU Law Center

Louisiana Law Review

Volume 1 | Number 3
March 1939

Equity - Injunction Prohibiting a Nuisance - Restraint of Violation of Usury Law

J. B. D.

Repository Citation

J. B. D., *Equity - Injunction Prohibiting a Nuisance - Restraint of Violation of Usury Law*, 1 La. L. Rev. (1939)
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol1/iss3/10

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

Notes

EQUITY—INJUNCTION PROHIBITING A NUISANCE—RESTRAINT OF VIOLATION OF USURY LAW—Defendant conducted a small loan business and the rate charged was nominally below the amount allowed by law. But in order to obtain a loan the borrower was required to take out insurance through the defendant for a minimum of $1,000. This, however, was not assigned to guarantee repayment of the loan. The amount of the loan, consisting of principal and interest, plus the cost of the premium of which the defendant received a 70% commission, was placed upon a single note and repaid by the borrower over a period of time. *Held,* that an injunction restraining this practice is permissible even though the loan is illegal and unenforceable. The fundamental purpose of the usury statute is to benefit the poor debtor class and this may best be accomplished by preventive measures aimed at a scheme designed to evade the statute. *Commonwealth ex rel. Grauman v. Continental Co., Inc.,* 121 S. W. 49 (Ky. App. 1938).

The injunction, equity's chief weapon, has long been issued when the remedy at law is inadequate. While it is a settled rule that equity does not enforce criminal law,[1] the fact that a statute is criminal in nature and provides penalties does not necessarily preclude the issuance of an injunction.[2] In a rather controversial class of cases, injunctions have often been issued, upon petition of the state, to stop practices which constitute public nuisances.[3] Thus the selling of liquor,[4] the refusal of an owner of cattle to submit them to tuberculin tests,[5] the keeping of a house of prostitution,[6] the conducting of bull and prize fights,[7]

1. Moir v. Moir, 182 Iowa 370, 165 N.W. 1001 (1918); State v. Conragan, 54 R.I. 256, 171 Atl. 326 (1934).

2. U.S. v. American Bond & Mortgage Co., 31 F. (2d) 448 (D.C.N.D. Ill. 1929), aff'd, 52 F. (2d) 318 (C.C.A. 7th, 1931), cert. denied, 285 U.S. 538, 52 S.Ct. 311 (1932); State v. Nelson, 189 Minn. 87, 248 N.W. 751 (1933); State Bar of Oklahoma v. Retail Credit Ass'n, 170 Okla. 246, 37 P. (2d) 954 (1934).

3. In re Debs, 158 U.S. 564, 15 S.Ct. 900, 39 L.Ed. 1092 (1895); Sanitary District v. U.S., 266 U.S. 405, 45 S.Ct. 176, 69 L.Ed. 352 (1925); State v. Smith, 43 Ariz. 131, 29 P. (2d) 718 (1934).

4. State v. Chicago, B. & Q. R. Co., 88 Neb. 669, 130 N.W. 295 (1911) (enjoining sale of liquor on trains); State v. Marston, 64 N.H. 603, 15 Atl. 222 (1888) (enjoining sale of liquor upon certain premises).

5. People v. Huls, 355 Ill. 412, 189 N.E. 346 (1934); State v. Heldt, 115 Neb. 435, 213 N.W. 578 (1927).

6. People v. Clark, 268 Ill. 156, 108 N.E. 994 (1915).

7. The courts have enjoined the use of premises for the proposed illegal exhibition but refused to enjoin the principals: Columbian Athletic Club v. State, 143 Ind. 98, 40 N.E. 914 (1895); Commonwealth v. McGovern, 116 Ky. 212, 75 S.W. 261 (1903); State v. Canty, 207 Mo. 439, 105 S.W. 1078 (1907).

the conducting of gambling operations,[8] and the practice of dentistry and medicine without a license[9] have all been enjoined as public nuisances even though a penalty had been provided for refusal to conform to the law. From this it is but a short step to the philosophy that upon the state rests the obligation of serving as guardian of the health, welfare and general interests of its citizens and that injunctions should be issued when these are threatened.[10] The problem lies in determining just how far injunctive relief may be carried without an undue encroachment upon the ordinary remedies of law.

In addition to penalties by way of forfeiture of interest, many states provide for the criminal prosecution of usurers.[11] It was not until 1929 that the flexible arm of equity reached out to assist in protection against usury. In *State v. McMahon*,[12] a Kansas court enjoined the exaction of excessive interest charges. The court stated that the practice was a grievous anti-social evil and that the usury statute, which provided as a penalty that the sum of interest over the legal rate should be deducted from the principal and interest, did not provide an actual safeguard for the poor debtors. In the situation contemplated many of the borrowers were unaware of the protection afforded them by law. The loan companies also threatened garnishment proceedings which would cause the borrowers to lose their jobs and consequently the debtor was afraid to refuse payment of the usurious charges. In *Means v. State*[13] it was held that an adequate remedy was provided by a statute declaring usurious contracts void and allowing

8. State v. Ak-Sar-Ben Exposition Co., 121 Neb. 248, 236 N.W. 736 (1931) (turf exchange); Jones v. State, 38 Okla. 218, 132 Pac. 319 (1913) (horse racing). Contra: State v. Patterson, 14 Tex. Civ. App. 465, 37 S.W. 478 (1896) (gambling house).

9. Kentucky State Board of Dental Examiners v. Payne, 213 Ky. 382, 281 S.W. 188 (1926); People v. Laman, 277 N.Y. 368, 14 N.E. (2d) 439 (1938), noted in (1938) 25 Va. L. Rev. 99. Contra: Dean v. State, 151 Ga. 371, 106 S.E. 792 (1921).

10. This principle was first clearly applied in In re Debs, 158 U.S. 564, 15 S.Ct. 900, 39 L.Ed. 1092 (1895).

11. Calif. Gen. Laws (Hennings, 1920) Act 5395; N. M. Ann. Stat. (1929) §§ 89-106; N. Y. Cons. Laws, C. 40 (Penal Law) § 2400; R. I. Gen. Laws (1923) c. 228, § 8; S. D. Rev. Code (1919) § 4382; Tenn. Ann. Code (Shannon, 1918) § 6732; Utah Comp. Laws (1917) § 3322. New Jersey reached the same results by allowing an indictment against the nuisance of maintaining a disorderly house, State v. Martin, 77 N.J.L. 652, 73 Atl. 548 (1909). Contra: Commonwealth v. Mutual Loan & Trust Co., 156 Ky. 299, 160 S.W. 1042 (1913). Cf. Art. 2924, La. Civil Code of 1870, providing that the usurious interest may be sued for and recovered within two years from the time of payment.

12. 128 Kan. 772, 280 Pac. 906 (1929); noted in (1930) 43 Harv. L. Rev. 499, (1930) 15 Cornell L. Q. 472, and (1930) 39 Yale L. R. 590.

13. Means v. State, 75 S.W. (2d) 953 (Tex. Civ. App. 1934).

double recovery of any usurious interest paid, and the court refused to enjoin such business.

It is submitted that the present decision in following the more liberal Kansas rule reaches a desirable result. The usury statutes, providing for forfeiture of interest and criminal prosecution, supply a remedy which theoretically may be adequate but actually fails to afford a much needed protection to the indigent debtor.

J. B. D.

INSURANCE—INTERPRETATION OF FIDELITY BOND—WARRANTIES AND REPRESENTATIONS—At the request of plaintiff, a commercial partnership, defendant surety company executed a fidelity bond covering plaintiff's employee. The bond contained a stipulation that "all statements which the employer has furnished to the Company concerning the employee or his duties or accounts are warranted by the employer to be true." The obligations assumed by the plaintiff in the written application—to have an inventory of the stock and an audit of the plaintiff's books made at regular intervals by a special representative—were breached prior to the employee's defalcation. The defendant urges such breaches as defenses to an action on the bond. *Held,* that, strictly construed, the representations which were breached did not concern "the employee or his duties and accounts" and are not referred to in the bond sufficiently to constitute warranties the terms of which must be strictly complied with. *Handelman's Chain Stores v. Maryland Casualty Co.,* 184 So. 827 (La. App. 1938).

Fidelity bonds are contracts of insurance,[1] and the general rules of insurance relative to representations and warranties apply in determining the legal effect of the breach of undertakings in the application.[2] Where statements have been expressly and

1. 1 Couch on Insurance (1929) 331, § 167; American Bonding & Trust Co. of Baltimore, Md. v. Burke, 36 Colo. 49, 85 Pac. 692 (1906); Auto Truck Steel Body Co. v. Chicago Bonding & Ins. Co., 218 Ill. App. 230 (1920); George A. Hormel & Co. v. American Bonding Co. of Baltimore, 112 Minn. 288, 128 N.W. 12, 33 L.R.A. (N.S.) 513 (1910).

2. Vance on Insurance (2 ed. 1930) 384, § 111; Moulor v. American Life Ins. Co., 111 U.S. 335, 4 S.Ct. 466, 28 L.Ed. 447 (1884); American Life & Accident Ins. Co. v. Walton, 133 Ark. 348, 202 S.W. 20 (1918); Spence v. Central Accident Ins. Co., 236 Ill. 444, 86 N.E. 104, 19 L.R.A. (N.S.) 88 (1908); Teeple v. Fraternal Bankers' Reserve Society, 179 Iowa 65, 161 N.W. 102, L.R.A. 1917C, 858 (1917); Supreme Council of Royal Arcanum v. Brashears, 89 Md. 624, 43